

Robert E. Sabido, OSB No. 964168

[rsabido@cosgravelaw.com](mailto:rsabido@cosgravelaw.com)

COSGRAVE VERGEER KESTER LLP

888 SW Fifth Avenue, Suite 500

Portland, Oregon 97204

Telephone: (503) 323-9000

Facsimile: (503) 323-9019

Attorneys for Defendant

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

MARLIN BENDER,

Plaintiff,

v.

RAY KLEIN, INC.,

Defendant.

Case No. 6:17-cv-01475-JR

**DEFENDANT'S ANSWER AND  
AFFIRMATIVE DEFENSES**

Defendant answers plaintiff's complaint as follows:

**I. INTRODUCTION**

1. Admits that this purports to be an action for alleged violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), but denies any liability or wrongdoing and further denies that plaintiff is entitled to recover any damages.

**II. JURISDICTION**

2. Admits that the court generally has subject matter jurisdiction over FDCPA claims, but denies the remaining allegations in paragraph 2.

**III. PARTIES**

3. Admits, on information and belief, that plaintiff is a natural person.

Defendant lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph 3 and, therefore, denies those allegations.

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ANSWER & affirmative defenses 4842-8378-2491 v.1

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4. Admits that it is a corporation, and that it generally engages in the business of collecting delinquent accounts by use of the mail and telephone. Defendant denies the remaining allegations in paragraph 4.

#### **IV. FACTUAL ALLEGATIONS**

5. Admits that, when it engages in certain activities, it may fit the definition of "debt collector" in 15 U.S.C. § 1692a(6). Defendant denies the remaining allegations in paragraph 5.

6. Defendant lacks sufficient information to form a belief as to the truth of the allegations in paragraph 6 and, therefore, denies those allegations.

7. Defendant lacks sufficient information to form a belief as to the truth of the allegations in paragraph 7 and, therefore, denies those allegations.

8. Defendant denies the allegations in paragraph 8, based in part on the lack of sufficient information to form a belief as to the truth of those allegations.

9. Denies the allegations in paragraph 9.

10. Denies the allegations in paragraph 10.

11. Denies the allegations in paragraph 11.

12. Denies the allegations in paragraph 12.

13. Admits that it has employees, but denies the remaining allegations in paragraph 13.

#### **COUNT I**

#### **FAIR DEBT COLLECTION PRACTICES ACT**

14. As to paragraph 14, defendant admits and denies as alleged above.

15. Denies the allegations in paragraph 15.

16. Except as specifically admitted, defendant denies each and every allegation of the complaint (including any purported allegations in the "Prayer for Relief" section).

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ANSWER & affirmative defenses 4842-8378-2491 v.1

## AFFIRMATIVE DEFENSES

17. Plaintiff fails to state factual matter sufficient to constitute a claim against defendant that is plausible on its face.

18. Plaintiff lacks standing to pursue the alleged claims because he has not suffered any concrete harm.

19. Plaintiff's claims are barred, in whole or in part, by the statute of limitations.

20. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel and/or laches.

21. Plaintiff's claims are barred, in whole or in part, by the doctrines of issue preclusion and/or claim preclusion.

22. Any alleged violation of the FDCPA was technical, non-material and/or de minimis in nature and, therefore, does not support a finding of liability or an award of damages or attorney's fees.

23. Any violation and/or damages resulted from the fault of plaintiff himself or of others for whom defendant is not responsible or liable.

24. Any damages were aggravated by plaintiff's own failure to use reasonable diligence to mitigate them.

25. Defendant acted in good faith at all times.

26. Any damages are offset by amounts that plaintiff owes on the delinquent account(s) at issue.

27. To the extent plaintiff is able to prove a violation of the FDCPA, any such violation was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

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ANSWER & affirmative defenses 4842-8378-2491 v.1

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**RESERVATION OF RIGHT TO AMEND**

28. Defendant reserves the right to amend and to add further defenses or claims as relevant information becomes available.

**PRAYER FOR RELIEF**

WHEREFORE, defendant prays for judgment in its favor and against plaintiff; for dismissal of plaintiff's claims with prejudice; for its costs and disbursements; and for any further relief that the court decides is proper.

DATED: January 26, 2018

COSGRAVE VERGEER KESTER LLP

*/s/ Robert E. Sabido*

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Robert E. Sabido, OSB No. 964168  
[rsabido@cosgravelaw.com](mailto:rsabido@cosgravelaw.com)  
Telephone: (503) 323-9000  
Fax: (503) 323-9019

Attorneys for Defendant

## CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing  
**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES** on the date indicated  
below by:

- mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- hand delivery,
- facsimile transmission,
- overnight delivery,
- electronic filing notification.

If served by facsimile transmission, attached to this certificate is the printed confirmation of receipt of the document(s) generated by the transmitting machine. I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney(s) at the address(es) listed below:

Joshua Trigsted  
Trigsted Law Group, P.C.  
5200 SW Meadows Road, Suite 150  
Lake Oswego, OR 97035  
Attorneys for Plaintiff

DATED: January 26, 2018

/s/ Robert E. Sabido  
Robert E. Sabido